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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,855	10/19/2001	John K. Billock	HBO-20 CON2	1770
20583	7590	01/08/2007		
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			EXAMINER SHANG, ANNAN Q	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 01/08/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/039,855

Applicant(s)

BILLOCK ET AL.

Examiner

Annan Q. Shang

Art Unit

2623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.



CHRIS KELLEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: With respect to claims 1-16, 19-25, 30, 31 and 36-38, rejected under 103(a) as being unpatentable over Garfinkle (5,530,754) in view of Callais et al (3,790,700), applicant amends claim 36, discusses the disclosure of Garfinkle and Callais, the 103(a) rejection and argues that Garfinkle in view of Callais do not teach the claimed limitations and are not rendered obvious from the combination (see page labeled 13+ of applicant's Remarks).

In responses, Examiner disagrees. Examiner notes applicant's arguments, however as admitted by applicant, Garfinkle teaches a VOD system in which catalog data of available video product listings, trailers, previews, etc., are transmitted to subscribers and non-subscribers to enable the subscribers and non-subscribers to interact to order VOD as desired (fig.2, col.3, lines 6-49 and col.4, line 35-col.5, line 22), as claimed. Garfinkle is silent to distinguishing between subscribers and non-subscribers. However in the same field of endeavor, Callais teaches CATV program control system (col.3, lines 55-66), which provides subscribers previews of subscription-TV program and further teaches Headend 13, which provides services to groups of subscribers by comparing a list of subscribers and their groups, lawyers, Doctors or other groups of subscribers sharing a common interest, restricting programs to only those selected groups of persons and if a request is received from persons not identified in a specific group, restricts or prevents such groups or persons from receiving the programs (col.5, lines 4-18 and line 48-col.6, line 22), which meets the deficiency not disclosed in Garfinkle. Note that Callais controls how programs on demand are transmitted to specific groups of people and further teaches that, a user of a different group can receive restricted programs from a different group, if some conditions are met, and can instantly modify a user's profile if they meet these conditions to enable them to receive the restricted program from other groups. Hence it would have been obvious to one skilled in the art to incorporate this teaching into the system of Garfinkle to interact with users to receive the necessary information, control the transmission of available programs to the users, furthermore add non-user or non-subscribers to a restricted group if they meet some set condition and make them also members of the group. Furthermore the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. All references are in the same field of endeavor, i.e., a head end or CATV broadcasting system, as such combining the teaching of Garfinkle in view of Callais, and the various 103(a) rejection of their dependent claims, would have been within the knowledge of one of ordinary skill in the art.

Hence, Examiner maintains the 103(a) rejection of Garfinkle in view of Callais and the various 103(a) rejection their dependent claims, is proper, meet all the claimed limitations and maintained. For the above reasons, the finality of the last office action is hereby maintained.